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2004 ANNUAL REPORT

A REPORT ON THE ACTIVITIES OF THE WEST VIRGINIA ATTORNEY GENERAL'S CONSUMER PROTECTION AND ANTITRUST DIVISIONS

I.

FOREWORD

Attorney General Darrell V. McGraw, Jr., submits this report to the Governor and Legislature of West Virginia pursuant to West Virginia Code § 46A-7-102(4)(2004). This report outlines the education, mediation, and enforcement activities of Attorney General McGraw's Consumer Protection and Antitrust Divisions from November 20, 2003 through November 19, 2004.

II.

INTRODUCTION

Attorney General McGraw's Consumer Protection and Antitrust Divisions operate under the direction of one Deputy Attorney General. The Divisions are responsible for enforcing the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 et seq.; the West Virginia Antitrust Act, W. Va. Code § 47-18-1 et seq.; and the Preneed Funeral Contracts Act, W. Va. Code § 47-14-1 et seq. There are five Assistant Attorneys General assigned to the two Divisions. One attorney is assigned full-time to enforce the Antitrust Act, one attorney is assigned half-time to the Preneed Funeral Unit, and the remaining lawyers on staff are responsible for enforcing the West Virginia Consumer Credit and Protection Act (the Act).

III.

CONSUMER EDUCATION

The mission of Attorney General McGraw's Consumer Protection Division is to protect West Virginia citizens from those that would harm them. Undoubtedly, the best protection is education and the division embarks each year on educating citizens about the latest scams, consumer fraud, and abuse. The Division employs five consumer advocates and a senior citizen liaison officer in an effort to reach citizens all over the state and in all age groups.

Attorney General McGraw's efforts in educating consumers about fraud and abuse were recognized this year by the National Association of Consumer Agency Administrators (NACAA). During its annual conference in San Diego, California, NACAA presented McGraw's office with the Achievement in Consumer Education Award. McGraw's office won the award because of three public service announcements it created to inform consumers about their rights to a refund under several antitrust settlements. All three cases had been filed against large pharmaceutical companies that engaged in anti-competitive conduct, which resulted in high prices for prescription drugs for consumers.

After litigating numerous cases involving the illegal pricing of prescription drugs, McGraw realized that consumer education on this critical issue was necessary. In October of this year, Attorney General McGraw launched a pharmaceutical web site that consumers can view to compare prices of many prescription drugs. The site, www.wvagrx.com, also has links to other helpful web sites.

In addition, this year Attorney General McGraw stepped up his efforts to educate kids. Specifically, his office developed a 30-minute program on Internet safety for West

Virginia schools in cooperation with the National White Collar Crime Center and the National Center for Missing and Exploited Children. The West Virginia program focuses on teaching school children how to protect themselves from identity theft and sexual predators on the Internet.

Finally, the Attorney General's web site, www.wvs.state.wv.us/wvag continues to spread his consumer education message over the Internet. The latest consumer protection efforts are identified on the site, which is maintained by a consumer protection employee. The web site receives approximately 6,429 hits monthly.

IV.

MEDIATION

The backbone of the Division's efforts – and its successes – is its mediation process. If a consumer has a dispute with a business, he can call the Division's toll-free hotline at 1-800-368-8808. After this call, a written complaint form and instructions are sent to the consumer's home. When the complaint form is returned, it is assigned to a non-lawyer mediator, who contacts the business on behalf of the consumer requesting a response to the complaint. The mediation process is voluntary, but the intent is to reach a settlement satisfactory to both the business and the consumer. The amount of money saved by consumers and businesses in litigation costs on account of mediation cannot be known, but it must surely be substantial.

The sheer volume of the Division's mediation activity attests to its utility. During the reporting period, the Division received 9,143 complaints. (See Exhibits 1 and 2.) The most common complaints involved credit and automobiles. (See Exhibit 3.) Of the complaints pending at the beginning of or received during the reporting period, the Division closed 9,581. As a result of the Division's mediation efforts, consumers received approximately $448,017.02 in cash refunds, and $2,048,190.73 in debt cancellation and value for products and services received. The total amount received in mediation was $2,496,207.75.

V.

ENFORCEMENT PROCEEDINGS

When mediation is unsuccessful, the consumer's complaint is reviewed by the Deputy Attorney General who decides whether to refer the file to a staff attorney. Often a simple letter from the attorney to the business will prompt a result acceptable to all parties. If the matter cannot be resolved informally, the staff attorney, in consultation with the Deputy, can initiate a formal investigation.

A.

LITIGATION

Following a pre-complaint investigation, the Attorney General can file suit against a company pursuant to W. Va. Code §§ 46A-7-108 through -111(2004) and petition the court to enjoin the company from doing business illegally in West Virginia. The Attorney General can also obtain restitution for consumers, consumer education, investigation costs, court costs, attorney fees, and civil penalties. During this reporting period, Attorney General McGraw recovered $58,404,584.00 through consumer protection litigation. (See Exhibit 1.) Identified below are the cases that Attorney General McGraw's Consumer Protection Division had in litigation during the 2004 reporting period.

1.

Darrell V. McGraw, Jr., Attorney General, ex rel. State of West Virginia; the West Virginia Public Employees Insurance Agency; and the West Virginia Department of Health and Human Resources v. The American Tobacco Company, et al.
(Civil Action No. 94-C-1707 - Circuit Court of Kanawha County)

Attorney General McGraw has previously reported a settlement reached between West Virginia, 45 states, the 4 original participating manufacturers, and dozens of subsequent participating manufacturers. Pursuant to the terms of that settlement, West Virginia is scheduled to receive $1,736,741,427.33*[1] over 25 years and thereafter $70,000,000.00* per year (adjusted upward for inflation and downward for market share loss as necessary) as long as the defendant manufacturers or their successors or assigns remain in business.

Through November 22, 2004, the State has collected $314,308,116.23* in payments since the execution of the master settlement. For the calendar year 2004, West Virginia received approximately $55,700,000.00 under the terms of the master settlement agreement. West Virginia will receive its next payment on April 15, 2005.

In 1999, the Legislature enacted W. Va. Code § 16-9B-1 et seq., requiring tobacco manufacturers that did not participate in the master settlement (NPMS) to place a sum certain into an escrow account for every cigarette sold in West Virginia. The fund's purpose is to guarantee a source of compensation for settlements and judgments, and to prevent these manufacturers from deriving large, short-term profits and then becoming judgment-proof. During the reporting period, $2,290,679.75 was placed into escrow accounts.

[1] Monies that are followed by an * were not counted during this reporting period.

When a NPMS fails to place money in an escrow account, the Attorney General will seek compliance voluntarily from the company before resorting to litigation. If the NPMS still refuses to comply, the Attorney General can sue it pursuant to W. Va. Code § 16-9B-3(b)(3)(2004). During this reporting period, the State filed nine lawsuits against NPMSs because they failed to place monies in the escrow account. The companies' names, dates the complaints were filed, and the status of the suits are as follows:

Gulf Conversion	November 21, 2003	Litigation pending
Grand Tobacco	December 4, 2003	$409,563.60*
Intercontinental Pacific, Universal Hamilton, Mighty Corp. a/k/a La Campana Fabrica de Tabaccos, Inc.	December 17, 2003	Litigation pending
Poison, Inc.	December 18, 2003	Agreed Dismissal Order
Southern Tobacco	December 18, 2003	Company is defunct
CigTec Tobacco LLC	May 28, 2004	$1,297,589.22*
Ridgeway Brands	May 28, 2004	Litigation pending
Seneca-Cayuga Tobacco Company	May 28, 2004	$4,120.00
GTC Industries	June 29, 2004	$328,679.04*

During this reporting period, the State has received $15,298.15 from NPMSs who failed to comply with W. Va. Code § 16-9B-1 et seq.

The total amount received by the State this year as a result of the tobacco litigation was $58,005,977.90.

2.

State ex rel. Darrell V. McGraw, Jr. v. Purdue Pharma, LP, et al.
(Civil Action No. 01-C-137-S - Circuit Court of McDowell County)

On June 11, 2001, Attorney General McGraw sued Purdue Pharma, LP, Purdue Pharma, Inc., Purdue Frederick Company, Abbott Laboratories, and Abbott Laboratories, Inc., alleging various product liability claims, as well as consumer protection and antitrust violations. The defendants manufacture and distribute OxyContin, which is a powerful pain reliever used for chronic pain relief. OxyContin has been widely abused and is frequently crushed to be inhaled or injected to gain an intense heroin-like high.

Attorney General McGraw alleged that the defendants made false, deceptive, and misleading representations about OxyContin or failed to disclose material facts in its marketing of the drug to physicians and the general public. The Attorney General further claimed that the defendants failed to use reasonable care in the manufacturing, marketing, and distribution of OxyContin.

The case settled on November 4, 2004. Under the terms of the agreement, the defendants will pay to the State of West Virginia a total of $10,000,000.00* with $2,500,000.00* being paid each year for four years. The State expects the first payment on December 15, 2004. The settlement money is earmarked for education and addiction rehabilitation services.

3.

State ex rel. Darrell V. McGraw, Jr. v. Household International, Inc.
(Civil Action No. 02-C-3169 - Circuit Court of Kanawha County)

On September 17, 2002, the Attorney General opened an investigation into the lending practices of Household International, Inc., doing business as Household Realty Corp. and Beneficial Finance Corp. (Household). The investigation revealed that Household had failed to properly inform consumers of hidden costs and insurance premiums that were included in their loans. Consumers complained they were misled to believe they were being charged interest rates of 7% or 8%, but in reality were charged nearly twice those rates. Consumers also complained they were being charged prepayment penalties that were not clearly disclosed on their contract.

An agreement was reached and a lawsuit and consent judgment were filed simultaneously on December 20, 2002. As a result, West Virginia consumers received $1,576,190.00* in restitution in 2003. In addition to the restitution funds, West Virginia received $200,000.00* for consumer education and $31,527.80* to pay for administrative fees. The total settlement was $1,807,717.80* and was counted in last year's report.

As of November 16, 2004, $30,653.55* of the settlement money set aside for consumer restitution had been unclaimed, either because the settlement administrator was unable to locate the consumer or the consumer did not cash the check. This money will be held by the State Treasurer as unclaimed property.

4.

State ex rel. Darrell V. McGraw, Jr. v. H & H Windows Unlimited, Inc.
(Civil Action No. 03-C-3075 - Circuit Court of Kanawha County)

H & H Windows Unlimited, Inc. (H & H), a West Virginia corporation, located in Morgantown, manufactures, sells, and installs vinyl insulated windows. The windows were sold also at Lowe's and 84 Lumber. In early 2003, the Division opened an investigation into the company's business practices based on consumer complaints that windows H & H sold were defective and that they did not replace them under their lifetime warranty. In March of 2003, H & H entered into an Assurance of Discontinuance with the State. The assurance obligated H & H to contact all the consumers who had filed complaints with the Division, to repair or replace their defective windows, and to honor all future claims made by consumers under the lifetime warranty.

In December of 2003, the Division filed suit against H & H for its failure to abide by the terms of the assurance. In January of 2004, the State and H & H entered into a settlement agreement. Under the terms of the settlement, H & H agreed to the following: to complete all past due repairs on consumers' defective windows by February 16, 2004; to make all future repairs or replacements of defective windows within 120 days of receiving the complaints from the Division; to provide the Division written proof that such repairs had been made; and to report to the Division the type and cost of the repairs. As of the date of this report, the value of the repairs and replacement windows is $226,969.74.

5.

State ex rel. Darrell V. McGraw, Jr., et al. v. Heritage Group, Inc., d/b/a Elkins Memorial Gardens, et al.
(Civil Action No. 03-C-44 - Circuit Court of Randolph County)

In April of 2003, Attorney General McGraw sued Heritage Group, Inc., doing business as Elkins Memorial Gardens, and its owners, John and Okey Phares, in the Circuit Court of Randolph County. The lawsuit sought refunds for consumers who purchased burial crypts in a mausoleum that was never built. Beginning in 1996, salesmen went door-to-door offering discounts to consumers who agreed to buy a crypt in a mausoleum. After receiving consumers' money, the defendants failed to set aside a percentage of the money in trust, as required by law. Over the years, Elkins Memorial Gardens received more than $100,000.00 from consumers to build the mausoleum. Nearly seven years had passed since the crypts were sold, and the mausoleum had not been built.

The case was settled and the defendants agreed to pay $109,488.01 over a six month period. By the January 20, 2004, deadline, the defendants had only paid $20,000.00. On January 21, 2004, the Attorney General petitioned the court to find the defendants in contempt, which prompted them to pay the remaining balance of $89,488.01. Consumers received refunds totaling $109,488.01.

6.

State ex rel. Darrell V. McGraw, Jr. v. Randy's Stereo Outlet
(Civil Action No. 03-C-420 - Circuit Court of Kanawha County)

In January of 2002, the Attorney General opened an investigation into the business practices of Randy Boggess doing business as Randy's Stereo Outlet. The

investigation revealed that Boggess operated an Internet business out of his St. Albans, West Virginia home. Boggess sold and traded high-end stereo equipment. Consumers complained that Boggess either failed to deliver the merchandise or delivered the incorrect merchandise.

A lawsuit was filed on February 27, 2003, and an order was entered on March 25, 2003, that enjoined Boggess from conducting any commercial transactions or business of any kind, including but not limited to the advertising, sale, or trade of goods or services to consumers in West Virginia. On April 30, 2003, the parties settled the case. Under the terms of the agreement, all consumers who filed complaints with the Attorney General and returned the incorrect merchandise to Boggess would receive full refunds. Boggess was also required to post a $25,000.00 bond with the Circuit Court of Kanawha County.

Boggess was unable to pay full refunds to the consumers. Therefore, on February 9, 2004, the Attorney General and Boggess entered into an amended final agreed order whereby Boggess forfeited the $25,000.00 bond, and paid the Attorney General's office an additional $5,000.00 to be used for consumer restitution. On March 19, 2004, refund checks totaling $30,000.00 were sent to 24 consumers. The consumers were also allowed to keep the merchandise they had received from Boggess.

7.

State ex rel. Darrell V. McGraw, Jr. v. Regency Park at Huntington, LLC, et al.
(Civil Action No. 04-C-901- Circuit Court of Cabell County)

On September 29, 2004, the Division sued two Maryland corporations, Regency Park at Huntington, LLC, and Huntington Facility, LLC, as well as their Maryland and Virginia manager/members (Regency Park), in the Circuit Court of Cabell County. The lawsuit was filed after consumers contacted the Division complaining about the company's refusal to pay promised refunds. Employees of the assisted living facility had represented to its residents that they had a day-to-day contract and promised to refund residents' families if a resident died prior to the time period for which they had paid in advance. The executive director of Regency Park even sent refund invoices to the management in Maryland listing the amount the relatives were owed.

Shortly after the lawsuit was filed, Regency Park agreed to provide the refunds to the deceaseds' families. On November 15, 2004, an agreed order was entered that required Regency Park to pay $16,317.35 to the 11 families who had complained to the Attorney General's office. Regency Park is also required to provide a refund to a consumer who files a meritorious complaint with the Attorney General's office by January 14, 2005.

8.

State ex rel. Darrell V. McGraw, Jr. v. Bear, Stearns & Co., Inc., et al.
(Civil Action No. 03-C-133M - Circuit Court of Marshall County)
(Docket No. 041375 - West Virginia Supreme Court of Appeals)

On June 23, 2003, Attorney General McGraw filed a lawsuit against ten Wall Street firms for multiple and repeated violations of the Act. The defendants named in

the complaint include Bear Stearns, Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, Citigroup Global Markets, J.P. Morgan, Morgan Stanley, Merrill Lynch, UBS Warburg, and U.S. Bancorp Piper Jaffray.

From July 1, 1999, to the present, the defendants offered both investment banking and research and analysis services. The Attorney General's lawsuit alleged that these two components of the defendants' businesses did not operate independently of each other. As a result, the companies' analysts would skew their projections because they were pressured by the defendants' investment banking customers to give favorable analysis on certain investments. The analysts issued reports that misstated and exaggerated the value of stocks and other financial products in order to benefit investment banking clients, which in turn benefitted the analysts with higher monetary compensation. At least two defendants allegedly engaged in illegal spinning practices whereby they provided preferential insider information to executives of companies whose investment banking business the defendants had or wanted to attract. The trial court denied the defendants' motion to dismiss, and then certified questions to the West Virginia Supreme Court of Appeals. The matter is stayed in the trial court pending a ruling from the Supreme Court.

9.

Cross Country Bank, et al. v. Darrell V. McGraw, Jr.
(Civil Action No. 04-C-464 - Circuit Court of Kanawha County)

During the summer of 2003, the Division opened an investigation of Delaware-based Cross Country Bank, its collection subsidiary, Applied Card Systems, and the companies' owner, Rocco A. Abessinio (Cross Country Bank), after former

employees of Cross Country Bank reported that the company was engaging in serious debt collection abuse. The Division also learned that Cross Country Bank was already under investigation by the Federal Deposit Insurance Corporation, and was being investigated or had already been sued by several states.[2]

On December 9, 2003, the Division issued an investigative subpoena. Cross Country Bank asked for an extension to respond to the subpoena and the Division agreed to the extension. Instead of responding to the subpoena, Cross Country Bank filed a lawsuit against the Attorney General. On April 1, 2004, the Division filed a counterclaim, motion for temporary injunction, and motion to enforce the investigative subpoena.

In its counterclaim, the Division alleged that Cross Country Bank engaged in a wide range of consumer protection violations, including deceptive marketing of credit cards to consumers with bad credit and abusive collection practices. Among other things, the Division alleged that Cross Country Bank targeted consumers with bad credit by leading them to believe that they would qualify for credit limits of "up to" $2,500.00 when they knew that consumers would only be approved, if at all, for a credit limit of $500.00. The Division also alleged that Cross Country Bank failed to conspicuously disclose that consumers would be charged $150.00 in fees before the card was activated.

Because consumers were misled about the fees and low credit limits, many consumers defaulted shortly after opening their account. These consumers were then subjected to aggressive debt collection practices, including repeated harassing

[2] In addition to West Virginia, the states of Minnesota, New York, Texas, and Wisconsin currently have suits pending against Cross Country Bank.

telephone calls at home and at work, wrongful disclosure of their delinquent accounts to their employers and other third parties, and unauthorized debits of payments from their checking accounts.

A hearing on the Division's motion for temporary injunction is scheduled for December 10, 2004, in the Circuit Court of Kanawha County.

10.

State ex rel. Darrell V. McGraw, Jr. v. TeleCheck Services, Inc., et al.
(Civil Action No. 00-C-3077 - Circuit Court of Kanawha County)
(Docket No. 30731 - West Virginia Supreme Court of Appeals)

On December 4, 2000, the Attorney General sued TeleCheck Services, Inc. (TeleCheck), a Delaware check guarantee company, and its subsidiaries alleging that the companies had engaged in numerous unfair and abusive debt collection practices. These practices included charging returned-check fees in excess of the amount permitted by statute, charging debt collection fees, threatening consumers that nonpayment would result in arrest or criminal prosecution, and electronically debiting consumers' accounts without their authorization. The suit also alleged that TeleCheck failed to investigate consumer disputes and to remove negative information from its database in a timely manner, as required by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.

On May 10, 2001, the Circuit Court of Kanawha County denied the Attorney General's request for an injunction. On January 30, 2002, the Attorney General appealed the Circuit Court's order to the West Virginia Supreme Court of Appeals. On May 23, 2003, the Supreme Court issued an opinion vacating the trial court's refusal to

grant the Attorney General's request for a temporary injunction and remanded the case to the trial court for further proceedings on the merits of permanent injunctive relief.

11.

State ex rel. Darrell V. McGraw, Jr. v. Check Investors, Inc., et al.
(Civil Action No. 03-C-1161 - Circuit Court of Kanawha County)

On May 15, 2003, the Attorney General sued Check Investors, Inc., a New Jersey collection agency, and several of its principals, doing business collectively as National Check Control (National Check Control), alleging that the defendants had extorted money from consumers. Specifically, the suit alleged that the defendants threatened to arrest and criminally prosecute consumers unless payment for alleged bad checks plus $130.00 in additional unlawful collection fees was wired to the company within 24 hours. National Check Control also refused to verify debts when disputed by consumers, and was not licensed to collect debts in West Virginia.

On June 19, 2003, the Circuit Court of Kanawha County enjoined National Check Control from engaging in any debt collection activities in West Virginia until further order of the court. The court also ordered the company to disclose to the Attorney General's office information about its collection activities in West Virginia. The company disclosed that during the period of January of 2002, up to June of 2003, it had collected a total of $324,906.08 from 2,289 West Virginia consumer accounts. The case remains pending.

12.

State ex rel. Darrell V. McGraw, Jr. v. JBC Legal Group, PC, et al.
(Civil Action No. 04-C-2083 - Circuit Court of Kanawha County)

On July 28, 2004, the Attorney General sued JBC Legal Group, PC, formerly known as JBC & Associates, PC (JBC), and its principals. The suit alleged that JBC attempted to coerce payments of alleged bad checks by threatening arrest and criminal prosecution, harassed consumers repeatedly by telephone, and refused to provide copies of canceled checks or other verification of debts when disputed by consumers.

On July 30, 2004, the Circuit Court of Kanawha County issued an order enjoining JBC from collecting debts in West Virginia pending further order of the court. Shortly thereafter, JBC removed the case to federal court. On October 18, 2004, U.S. District Judge John T. Copenhaver, Jr. remanded the case back to state court. The litigation is pending.

13.

State ex rel. Darrell V. McGraw, Jr. v. Christopher Scott Long, et al.
(Civil Action No. 04-C-818 - Circuit Court of Kanawha County)

On March 30, 2004, the Attorney General filed a lawsuit against Christopher Scott Long and Cari Long (Longs), doing business as Countertops Plus, in the Circuit Court of Kanawha County, after receiving numerous complaints from consumers. The consumers alleged that they had paid Countertops Plus deposits or paid in full for the purchase and installation of custom cabinets, and that the Longs never delivered the merchandise or completed installation.

On July 19, 2004, the Longs entered into an agreed final order with the Attorney General in which they agreed to make monthly payments of $600.00 for 17 months, until the $9,646.13 owed to consumers was paid in full. To date, they have paid $3,000.00.

14.

State ex rel. Darrell V. McGraw, Jr. v. Donna K. Diulus, et al.
(Civil Action No. 04-C-281 - Circuit Court of Marion County)

On August 31, 2004, the Division sued Donna K. Diulus and Carmine Diulus, Pennsylvania residents, who do business as C.M.S., C.M.S. Pools, and C.M.S. Construction (C.M.S.). C.M.S. advertises, sells, and installs above-ground swimming pools throughout West Virginia. The suit alleges that C.M.S. failed to honor the lifetime warranties it offered on the pools, that it unlawfully excluded or limited warranties, that it advertised goods or services with intent not to sell them as advertised, that it used misrepresentations or omissions of material fact in connection with the sales, that it failed to give consumers notice of their three-day right to cancel, and that it refused to return deposits to consumers who had cancelled their sale.

At the preliminary injunction hearing, C.M.S. agreed to be enjoined from all advertising and sales in West Virginia during the pendency of the suit. On November 8, 2004, a second hearing was held to determine whether C.M.S. should also be required to post a bond. The court has not ruled on this issue. The trial has been scheduled for June of 2005.

15.

State ex rel. Darrell V. McGraw, Jr. v. National Fuels Corp., et al.
(Civil Action No. 01-C-230 - Circuit Court of Kanawha County)
(Docket No. 31190 - West Virginia Supreme Court of Appeals)

On February 5, 2001, the Division sued Derek Fredette, a Florida resident, and National Fuels Corporation (National Fuels), in the Circuit Court of Kanawha County. National Fuels had contacted several West Virginia auto dealers during the summer and fall of 2000, and sold them gasoline vouchers as part of a "free gasoline" promotion. Typically, a dealer paid $45.00 for a voucher with a face value of $500.00. The dealers gave the vouchers to consumers as incentives to purchase cars. Fredette told the dealers that consumers could redeem these vouchers for $500.00 worth of free gasoline. He claimed that the cost of the discount program was underwritten by major gasoline companies trying to develop brand loyalty to their products.

In reality, there were no participating gasoline companies, and National Fuels failed to provide consumers reimbursement for any gasoline in connection with the promotion. On February 15, 2001, the Division obtained a preliminary injunction against National Fuels. The order required the defendants to post a bond in an amount sufficient to cover the face value of the vouchers that had been distributed in West Virginia. The defendants never posted the bond. On June 13, 2001, the Circuit Court of Kanawha County granted summary judgment in favor of the State.

The defendants appealed the Circuit Court order to the West Virginia Supreme Court of Appeals. On June 24, 2004, the West Virginia Supreme Court of Appeals affirmed the summary judgment order that had granted a permanent injunction.

16.

State ex rel. Darrell V. McGraw, Jr. v. Masters Tuxedo Charleston, Inc., et al.
(Civil Action No. 04-C-258 - Circuit Court of Kanawha County)
(Bankruptcy No. 2:04-BK-20883 - United States Bankruptcy Court for the Southern District of West Virginia)

In October of 2003, Masters Tuxedo Charleston, Inc. (Masters), closed its doors suddenly. In November of 2003, the Attorney General opened an investigation and contacted Robert Kraft, the owner of Masters, in an effort to retrieve the dry cleaning that had been left in the stores when they closed. When negotiations with Kraft failed, the Attorney General sued Masters and its owner on February 4, 2004.

Subsequently, Kraft and Masters filed Chapter 7 bankruptcy in the United States Bankruptcy Court for the Southern District of West Virginia. The Division then filed a proof of claim with the bankruptcy court seeking the return of the consumers' clothing. In June, the bankruptcy court ordered Masters to give the clothing remaining in the stores to the Attorney General's office. The Division received approximately 115 articles and distributed to consumers 91 pieces of clothing, for an approximate value of $3,375.00. All unidentified or unwanted clothing was donated to the Past'n Present Clothing Store in Charleston.

17.

State ex rel. Darrell V. McGraw, Jr. v. Johnson & Johnson, et al.
(Civil Action No. 04-C-156 - Circuit Court of Brooke County)

In August of 2004, Attorney General Darrell McGraw filed a lawsuit against Johnson & Johnson, Janssen Pharmaceutica Products, LP and Janssen Pharmaceutica, Inc. These companies manufacture Risperdal, a prescription drug used for certain mental illnesses, and Duragesic, a narcotic pain reliever absorbed through a skin patch.

The State alleged that the defendants had misled and misrepresented to doctors the risks and benefits of these drugs. This case is in the early stages of the litigation.

18.

State ex rel. Darrell V. McGraw, Jr. v. Minnesota Mining and Manufacturing Company, et al.
(Civil Action No. 03-C-109 - Circuit Court of Lincoln County)
(MDL No. 2:03-2161 - U.S.D.Ct., Southern District of West Virginia)

On August 6, 2003, the Attorney General sued Minnesota Mining and Manufacturing Company, Mine Safety Appliances Company, and American Optical Corporation in the Circuit Court of Lincoln County. The State alleged that the defendants had violated the Act by falsely advertising the capabilities of the dust masks they sold, which are used in industrial settings, such as coal mines. Specifically, the State alleged that while the dust masks were marketed as being safe and effective, the masks failed repeatedly, resulting in the State incurring larger than anticipated worker compensation claims and other health related costs and expenses.

The defendants removed the case to United States District Court for the Southern District of West Virginia. The litigation is pending.

19.

State ex rel. Darrell V. McGraw, Jr. v. Wholesale Used Cars, Inc.
(Civil Action No. 03-C-2839 - Circuit Court of Kanawha County)

Wholesale Used Cars, Inc. (Wholesale), is a “buy here-pay here” used car dealer located in Charleston, West Virginia. In February of 2002, Wholesale entered into an Assurance of Discontinuance in which it promised to stop selling unmerchantable vehicles and to take all necessary steps to make its business practices comply with West

Virginia law. After the assurance was signed, the Attorney General continued to receive numerous complaints from consumers about the same types of violations that had been prohibited in the assurance.

In November of 2003, the Division sued Wholesale alleging it engaged in business practices that violated the Act. These violations included the following: (1) attempting to disclaim implied warranties; (2) failing to post Buyers Guides on cars; (3) asserting a right to collect a late fee before expiration of the 10-day grace period; (4) charging late fees in excess of the statutory maximum; and (5) failing to provide disclosures required by the Truth in Lending Act, 15 U.S.C. § 1638 et seq. At a preliminary injunction hearing on January 9, 2004, Wholesale agreed to be enjoined from further financing of autos until it adopted loan documents that comply with West Virginia and federal law.

Thereafter, the court appointed a special commissioner to make findings of fact, conclusions of law, and recommendations to the court about appropriate consumer restitution. Proceedings before the special commissioner are in progress.

20.

State ex rel. Darrell V. McGraw, Jr. v. Alyon Technologies, Inc., et al.
(Civil Action No. 03-C-1197 - Circuit Court of Kanawha County)

On May 20, 2003, Attorney General McGraw sued Alyon Technologies, Inc., and its CEO, Stephane Touboul, for violating the Act. In his complaint, the Attorney General alleged that the defendants used computer technology to capture and track telephone numbers of consumers dialing into a pornographic website. In several cases, consumers were billed who did not visit the site, did not own computers, or were not connected to the Internet. In August of 2003, the Division and the defendants reached an indefinite

agreement in which the defendants agreed not to collect any of the alleged debts owed by West Virginia consumers and to block all telephone calls originating from West Virginia.

The Circuit Court of Kanawha County dismissed the action in September of 2004, based on a procedural technicality. The court is considering reinstating the case.

21.

Medco Health Solutions, Inc., et al.
v. West Virginia Public Employees Insurance Agency
(Civil Action No. 02-C-2769 - Circuit Court of Kanawha County)

On October 25, 2002, the West Virginia Public Employees Insurance Agency was sued by Medco Health Solutions, Inc., and Medco Health Prescription Solutions, LLC. The complaint alleged that PEIA was misinterpreting the pharmacy benefits management contract with Medco and had not paid Medco all sums owing. PEIA filed a counterclaim and third-party complaint. In December of 2003, Medco's motion to dismiss the counterclaim and third-party complaint was denied in part, and granted in part. The matter is proceeding with discovery.

22.

State ex rel. Darrell V. McGraw, Jr., et al. v. Medco Health Solutions, Inc., et al.
(Civil Action No. 02-C-2944 - Circuit Court of Kanawha County)

On November 13, 2002, the Attorney General and PEIA filed a separate complaint against Medco Health Solutions, Inc., and others, claiming that the company's pharmacy benefits manager and its affiliated companies had used misleading and deceptive representations in securing the pharmacy benefits management contract with PEIA. The

lawsuit also alleged that Medco engaged in fraud, tortious interference with the business relationship, and breach of contract. PEIA and the Attorney General are seeking restitution, punitive damages, penalties and costs. The case is pending.

23.

State ex rel. Darrell V. McGraw, Jr. v. Level Propane Gases, Inc.
(Civil Action No. 01-C-1654 - Circuit Court of Kanawha County)
(Bankruptcy No. 02-16172 - United States Bankruptcy Court for the Northern District of Ohio)

In May of 2001, the Attorney General sued Level Propane Gases, Inc. (Level), of Cleveland, Ohio, a seller of propane gas for home heating and cooking. In its complaint, the Division alleged that Level started charging customers far more money for propane gas than was allowed under the terms of their contracts. In addition, the complaint alleged that during December of 2000 and January of 2001, an exceptionally cold winter, Level customers sometimes had no propane to heat their homes or cook with because Level was unable to meet customer demand.

On February 6, 2002, the Division settled with Level. Under the terms of the settlement, the State was to receive $25,000.00* for consumer education and restitution. Before Level made a payment to the State, it filed for bankruptcy protection in the United States Bankruptcy Court for the Northern District of Ohio. The bankruptcy case is pending.

24.

State ex rel. Darrell V. McGraw, Jr. v. Imperial Marketing, et al.
(Civil Action No. 94-C-243 - Circuit Court of Kanawha County)

Attorney General McGraw originally filed this case in 1994 against 106 companies that conducted sweepstakes contests by direct mail or by telephone in violation of the West Virginia Prizes and Gifts Act, W. Va. Code § 46A-6D-1 et seq. All of the companies have stopped doing business illegally in West Virginia. Only one defendant, Seta Corporation, remains.

In February of 2002, the Division filed a motion for summary judgment against Seta Corporation. The motion was argued at a hearing on March 1, 2002. Unfortunately, the judge assigned to the case retired without ruling on the matter. On February 18, 2003, the motion was reargued before a new judge. On August 31, 2004, the judge granted the State's motion for summary judgment. Thereafter, Seta moved for relief from the judgment. The case is pending.

25.

State ex rel. Darrell V. McGraw, Jr. v. Stephen Allen Bowles, et al.
(Civil Action No. 04-C-1704 - Circuit Court of Kanawha County)
(Bankruptcy No. 04-40412 - United States Bankruptcy Court for the Southern District of West Virginia)

On June 17, 2004, the Division filed a lawsuit against Stephen and Sharon Bowles, the owners of Pyrotechnic Specialties Fireworks Display Company (Pyrotechnic), a Mineral Wells company, that specialized in the sale of fireworks and fireworks displays. After accepting deposits for fireworks and/or fireworks displays from various communities and organizations, Pyrotechnic told their customers that they could not provide the fireworks as promised.

During a preliminary injunction hearing held on June 24, 2004, the court ordered Pyrotechnic to be enjoined from conducting their business in the State until it demonstrated to the court that full refunds had been made. To date, two of the organizations have received refunds totaling $3,956.00.

After the State filed its lawsuit, the defendants filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of West Virginia. The Division is currently attempting to have the bankruptcy stay lifted. The total remaining amount of restitution owed is $18,042.50.*

26.

State ex rel. Darrell V. McGraw, Jr. v. Huey Small d/b/a H & S Paving, et al.
(Civil Action No. 97-C-1041 - Circuit Court of Kanawha County)

In 1998, the Division shut down a paving scam operated by Huey Small, a Mercer County man who defrauded scores of West Virginians by approaching them at home and promising a good price on "leftover" asphalt. The work performed was always substandard. Nonetheless, Small's band of workers would refuse to leave the consumer's home until they had coerced victims to pay huge sums of money. The Division sued Small, and the Circuit Court of Kanawha County ordered him to pay $125,458.00* in consumer restitution.

When Small disobeyed the court's orders to pay restitution, the court jailed him for contempt. Small was incarcerated until he agreed to pay off his debt to consumers in monthly installments of $500.00. The Division has collected $5,500.00 from Small during this reporting period.

27.

State ex rel. Darrell V. McGraw, Jr. v. S & T Heating Service, et al.
(Civil Action No. 04-C-39 - Circuit Court of Mingo County)

In October of 2003, the Division began investigating S & T Heating Service, (S & T), a heating and cooling contractor in Justice, West Virginia, and its owner, Roger Toler (Toler). Consumers complained that Toler had sold them defective heating and cooling goods, and in some cases had improperly installed them. Consumers' requests to Toler to return and repair the equipment were ignored.

The Attorney General's office began an investigation, and issued a subpoena to obtain information relating to Toler's business practices. Toler refused to respond to the subpoena. The Division filed a petition to enforce the subpoena in the Circuit Court of Mingo County, and the court ordered Toler to respond by April 25, 2004. Toler ignored the court's order. On September 7, 2004, the court ordered that Toler be incarcerated indefinitely, until such time as he complies with the investigative subpoena.

28.

State ex rel. Darrell V. McGraw, Jr. v. Four Seasons Siding and Windows Co., et al.
(Civil Action No. 04-MISC-480 - Circuit Court of Kanawha County)

On November 8, 2004, the Division issued an investigatory subpoena to Four Seasons Siding and Windows Company (Four Seasons), in St. Albans, West Virginia, after receiving several consumer complaints against the company. On November 17, 2004, the Attorney General was forced to file a petition to enforce an investigatory subpoena in the Circuit Court of Kanawha County against Four Seasons and LaRue Causey, individually, and as President of Four Seasons, when Four Seasons did not

respond to the subpoena in a timely manner. A hearing on the petition has been scheduled for January 19, 2005.

29.

State ex rel. Darrell V. McGraw, Jr. v. Capitol City Septic Tank Service, et al.
(Civil Action No. 04-MISC-483 - Circuit Court of Kanawha County)

In September of 2004, the Division began investigating Capitol City Septic Tank Service in Charleston, West Virginia, and its owner Claude Linzy (Linzy). Complaints by consumers alleged that Linzy had abandoned jobs after agreeing to install or repair residential septic tanks, and that Linzy refused to repair defects. The Division issued an investigative subpoena requesting that Linzy produce certain documents relating to his septic tank business, but the subpoena was ignored. On November 18, 2004, the Attorney General filed a petition to enforce the subpoena in the Circuit Court of Kanawha County. Litigation is pending.

B.

ASSURANCES OF DISCONTINUANCE AND SETTLEMENT AGREEMENTS

If, after investigating a business, a lawyer in Attorney General McGraw's Consumer Protection Division determines that the company has engaged in conduct that violates the Act, he or she typically tries to settle the matter with the business without filing a lawsuit. Specifically, the attorney will ask the company to sign a Voluntary Assurance of Discontinuance pursuant to W. Va. Code § 46A-7-107(2004) or enter into a Settlement Agreement. This approach has proven very successful, with $4,916,377.30 in refunds, cancellation of debt, and product received being collected during the reporting period.

The companies that entered into Voluntary Assurances of Discontinuance and Settlement Agreements with the Division during the reporting period are identified below.

1.

IN THE MATTER OF AQUION PARTNERS, LP MANUFACTURER/DISTRIBUTOR OF RAINSOFT WATER TREATMENT SYSTEMS

On March 3, 2003, the Attorney General entered into a Settlement Agreement with Aquion Partners, LP (Aquion), the manufacturer of RainSoft water treatment systems, that afforded full refunds and debt cancellation for West Virginia consumers who filed complaints with the Attorney General's office by September 5, 2003. The agreement with Aquion offered full refunds to all consumers who purchased RainSoft water treatment systems after December 31, 1996, from Advanced Water Solutions, Inc., formerly of Greensburg, Pennsylvania, and The Only Way Water Treatment Company, f/k/a CURE Water Treatment, Inc., of Buckhannon, West Virginia. The agreement with Aquion has

resulted in $1,851,262.87 in cash refunds and $447,581.62 in cancelled loan obligations for approximately 715 consumers. In addition, 514 of the consumers who received full refunds were also allowed to keep their systems, resulting in $514,000.00 of value received. Approximately 50 consumer complaints remain pending.

The agreement with Aquion outlined numerous alleged violations of state consumer protection laws committed by the former RainSoft dealers. The allegations included installing water treatment systems without a contractor's license; offering consumers money for referral to potential customers who purchased systems; failing to provide consumers with proper notice of the three-day right to cancel; misrepresenting the terms and conditions of financing; and making unfounded claims about the ability of the systems to remove or minimize certain pollutants, contaminants, and micro-organisms in consumers' water.

2.

IN THE MATTER OF UNITED CONSUMER FINANCIAL SERVICES COMPANY

On January 20, 2004, the Division entered into an Assurance of Discontinuance with United Consumer Financial Services Company (UCFS) of Westlake, Ohio. UCFS is a wholly-owned subsidiary of The Scott Fetzer Company, the manufacturer of Kirby vacuum cleaners, and exclusively finances the door-to-door sale of Kirbys to consumers across the nation. Because Kirby distributors tend to target consumers with bad credit, the UCFS loans have a high rate of default.

The Division initiated an investigation after receiving several complaints from consumers. The investigation revealed that UCFS had failed to furnish proper notice of the right to cure default, which resulted in it prematurely accelerating the consumer's

balance and also improperly reporting the default to credit reporting agencies. The Division also learned that UCFS had assigned collection of its delinquent accounts to at least two unlicensed collection agencies.

In the assurance, UCFS agreed to furnish proper notice of the right to cure default to consumers in the future and to ensure that all collection agencies that it retains are licensed to collect debts in West Virginia. UCFS also agreed to ask the three major credit reporting agencies to delete all information that it had reported in those instances where consumers had not been given proper notice of the right to cure default or where the consumer's account had been referred for collection to unlicensed collection agencies. As a result, 1,157 accounts were deleted from the records of West Virginia consumers. The consumers were no longer obligated to pay the remaining loan balance to UCFS, resulting in the cancellation of an estimated $1,000,000.00 in indebtedness.

3.

IN THE MATTER OF BIG SANDY FURNITURE, INC., AND 50% CASH BACK, INC.

In December of 2003, the Division began receiving complaints from consumers who had purchased products at Big Sandy Furniture, Inc., a Kentucky corporation, because the company had failed to honor a promised rebate program. The consumers complained that they had made purchases in 1993, mailed in their rebate certificates, and had not received their rebates. The rebate program was insured by Western Indemnity, an insurance company headquartered in Texas. Approximately two years ago, the insurance company was placed in receivership by the Texas Insurance Commissioner and had no funds to pay the rebates under the 50% Cash Back program.

On November 19, 2004, Big Sandy signed an Assurance of Discontinuance. In the assurance, Big Sandy agreed to pay West Virginia consumers the rebates they were due in the form of a gift card for consumers who lived in Big Sandy's sales area and in the form of a check for consumers who did not. During this reporting period, 97 consumers have received a total of $71,330.55 in restitution.

4.

IN THE MATTER OF JESSE L. RIDDLE d/b/a RIDDLE & ASSOCIATES, PC

On March 19, 2004, the Division entered into an Assurance of Discontinuance with Jesse L. Riddle, doing business as Riddle & Associates, PC (Riddle), a collection agency based in Draper, Utah. The Division commenced an investigation of Riddle after receiving complaints that Riddle was adding unlawful debt collection fees and other charges onto consumers' accounts, and was threatening to file lawsuits to collect debts when it had no intention of doing so. Moreover, Riddle was collecting debts in West Virginia without a license and surety bond as required by the State Tax Department. In the assurance, Riddle agreed to refund 388 West Virginia consumers $67,251.65.

5.

IN THE MATTER OF COLLECTION OF DIRECTV ACCOUNTS BY RIDDLE & ASSOCIATES, PC

The main company whose accounts Riddle collected for in West Virginia was DIRECTV of El Segundo, California. The investigation of Riddle resulted in a separate settlement agreement between the Attorney General and DIRECTV wherein DIRECTV agreed to cancel the remaining indebtedness and close with a zero balance the accounts

of all West Virginia consumers that had been referred to Riddle for collection. The agreement with DIRECTV resulted in the cancellation of $760,944.31 of indebtedness owed by 4,651 West Virginia consumers.

6.

IN THE MATTER OF GREEN TREE SERVICING, LLC

In October of 2004, the Division entered into an Assurance of Discontinuance with Green Tree Servicing, LLC (Green Tree), a company headquartered in St. Paul, Minnesota. Green Tree is engaged in the business of servicing loans made to consumers who purchase manufactured housing.

After an investigation conducted in part with the West Virginia Division of Banking, the Attorney General's office found a number of Green Tree's practices to be unfair and deceptive. Specifically, even though consumers had insurance on their homes, Green Tree was requiring them to purchase expensive "force-placed" insurance, insurance from third-party companies with a B+ or better A.M. Best rating, or from companies that provide "replacement cost" on all risk coverage.

In the assurance, Green Tree promised to comply with the Act and to continue financing consumers' loans as long as the consumer's insurance company was authorized to do business by the West Virginia Insurance Commissioner. Green Tree agreed to reimburse all consumers who had insurance "force-placed" on their accounts and to reimburse consumers who cancelled their original insurance policy to purchase a more expensive policy from a different company. The total amount reimbursed to West Virginia consumers was $47,440.92. In addition, Green Tree paid the State $10,000.00 to be used for consumer protection purposes, for a total settlement of $57,440.92.

7.

IN THE MATTER OF NATIONAL WARRANTY INSURANCE RISK RETENTION d/b/a NATIONAL WARRANTY INSURANCE COMPANY d/b/a SMART CHOICE (Bankruptcy No. 4:03-CV-03341-TMS - United States Bankruptcy Court for the District of Nebraska)

In August of 2003, the Attorney General opened an investigation into the business activities of the National Warranty Insurance Risk Retention Company (NWIRR). NWIRR had offered an extended warranty under the name Smart Choice. Smart Choice was offered for sale by new and used car dealers throughout West Virginia. Consumers complained that when they attempted to use the warranty, the dealer told them it was no longer valid.

On August 1, 2003, NWIRR filed for and received liquidation status in the Grand Court of the Cayman Islands. An order was entered by the United States Bankruptcy Court for the District of Nebraska that permanently enjoined all actions against NWIRR or the property involved in the Cayman Islands liquidation.

The Division is continuing to work with both the dealers and the assignee lenders in an effort to obtain refunds for the consumers. During this reporting period, 38 consumers have received a refund for a total of $31,114.87.

8.

IN THE MATTER OF WARNER-LAMBERT, LLC SUCCESSOR TO WARNER-LAMBERT COMPANY

In March of 2004, the Division joined a multistate investigation of Warner-Lambert, a company involved in the research, development, manufacture, distribution and promotion of drugs used in the treatment of various illnesses and diseases. Neurontin, a

prescription drug, is approved by the FDA for the treatment of epilepsy and in the treatment of post-herpetic neuralgia. The states had concerns that Warner-Lambert Company, the predecessor of Warner-Lambert, LLC, had marketed Neurontin for purposes in violation of State consumer protection laws.

On May 11, 2004, the State settled with Warner-Lambert. Under the terms of the settlement, Warner-Lambert agreed to stop promoting Neurontin for off-label purposes. It also agreed not to provide health care professionals with written materials describing the off-label use of the product unless it appeared in a scientific or medical journal.

Within 30 days of the effective date of the assurance, Warner-Lambert agreed to pay $28,000,000.00 into an interest-bearing settlement fund. West Virginia's share of this money was $25,000.00, which must be used for consumer education purposes.

9.

IN THE MATTER OF MONTCROFT FARMS

In May of 2004, the Division received a complaint from Bill Grose, a small businessman who operates Montcroft Farms in Terra Alta, West Virginia. Montcroft Farms grows and sells potatoes. West Virginia University (WVU) had contacted Montcroft Farms and asserted that the farm logo used on the potato bags was similar to the WV trademark for the University. WVU had asked that Grose cease and desist using the logo. As a result of the Division's intervention, WVU agreed to allow Grose to use up his current inventory of bags. The total of this settlement was $16,600.00.

10.

IN THE MATTER OF OHIO VALLEY BANK

On November 4, 2004, the Division entered into a Settlement Agreement with Ohio Valley Bank of Gallipolis, Ohio, arising from the bank's financing of sales of consumer goods and services by West Virginia dealers. The Division opened an investigation of the bank after receiving a consumer complaint indicating that the bank viewed such loans as being governed by Ohio law, rather than West Virginia law. As a result, the bank failed to comply with applicable West Virginia laws pertaining to maximum allowable late fees and requiring that consumers be furnished with proper notices of their right to cure default before repossessions or other adverse actions may occur.

Under the terms of the settlement, the bank agreed to comply with West Virginia law in the financing of any consumer sales by dealers located in West Virginia. The bank also agreed to cancel a consumer's debt and return his repossessed boat for a value of $13,256.32.

11.

IN THE MATTER OF DIVERSIFIED ADJUSTMENT SERVICES

The Division opened its investigation of Diversified Adjustment Services (Diversified) on August 27, 2004, after receiving a complaint regarding its collection practices. Diversified is a debt collection agency headquartered in Minneapolis, Minnesota, and was collecting debts for U.S. Cellular.

The Division's investigation revealed that Diversified was not registered to collect debts in West Virginia. Diversified agreed to register with the State Tax Department as a

debt collector and to provide credits to 98 consumers who were charged unlawful fees, for a total of $10,536.87.

12.

IN THE MATTER OF TED W. SOLARI, MD, d/b/a PEDIATRIC CARE UNLIMITED, INC.

On October 21, 2004, the Division entered into an agreement with Ted W. Solari, MD, doing business as Pediatric Care Unlimited, Inc. (Pediatric Care). The Division commenced an investigation of Pediatric Care after receiving a consumer complaint about fees charged for missed appointments. The Division's investigation disclosed that Pediatric Care was charging various fees that violate the Act, including charging "late co-pay fees," monthly "administrative rebilling fees," and also charging patients if they missed two or more appointments.

In the agreement, Pediatric Care promised to refrain from charging the late co-pay fees and administrative billing fees entirely, and to refrain from charging fees for missed appointments to Medicaid patients. The company also agreed to refund all impermissible fees collected or charged in the past. As a result of this agreement, Pediatric Care promised to issue account credits and refunds totaling $8,104.00 for the 11-year period that such fees were charged.

13.

IN THE MATTER OF MICHAEL'S PAINTING CORPORATION

In November of 2003, the Division began receiving complaints from consumers regarding an incident that occurred during July and August of 2002, on property owned by Eastern Associated Coal Corporation (Eastern). According to these complaints, in

July of 2002, Michael's Painting Corporation (Michael's) entered into a contract with Eastern to paint structures on the coal company's property at the Federal 2 mine near Fairview, West Virginia. The painting commenced on July 2, 2002, and continued until August 10, 2002. Part of the job included painting above the parking lot where several Eastern employees parked their vehicles. Over spray from the painting landed on several of the vehicles and damaged their finish.

Michael's reported some consumers' damaged vehicles to its insurance company and these consumers were compensated for the damages. The consumers who complained to the Attorney General were not compensated. After contacting Eastern and Michael's insurance carriers, the Attorney General was able to obtain restitution in the amount of $8,009.14 for 26 consumers.

14.

IN THE MATTER OF CULLIGAN INTERNATIONAL COMPANY

On September 23, 2004, the Division entered into a Settlement Agreement with Culligan International Company (Culligan) of Northbrook, Illinois, the manufacturer and distributor of Culligan water treatment systems. The Division commenced an investigation of Culligan after receiving numerous consumer complaints arising from sales by a Culligan dealer, Omega Water, Inc., of Clarksburg, West Virginia.

In the assurance, Culligan agreed to instruct its dealers to refrain from financing door-to-door sales of water treatment systems on "open credit financing plans" and to conform its sales documents and practices to West Virginia law. Culligan also agreed to instruct its dealers to make a good faith effort to respond to and resolve all future

complaints in a timely manner. In addition, Culligan agreed to pay $7,500.00 to be used for consumer restitution.

15.

IN THE MATTER OF GLOBAL ACCEPTANCE CREDIT CORPORATION

On May 12, 2004, the Division entered into an Assurance of Discontinuance with Global Acceptance Credit Corporation (Global), a collection agency based in Arlington, Texas. The Division commenced an investigation after receiving a complaint indicating that Global was collecting debts in West Virginia without a license and surety bond as required by West Virginia law.

In the assurance, Global agreed to obtain the required license and surety bond before collecting debts in West Virginia in the future. Global also agreed to pay $5,000.00 to be used for consumer restitution.

16.

IN THE MATTER OF CAM-ROCK ENTERPRISES, INC.

In March of 2004, the Division secured an agreement with AquaSports, Inc., of New Brunswick, New Jersey, and Menear, Inc., of Jeannette, Pennsylvania, to resolve the complaints of two consumers who purchased above-ground swimming pools from Cam-Rock Enterprises, Inc., of Morgantown, West Virginia. The Division opened the investigation after Cam-Rock failed to take responsibility for repairing the pools when they became unusable within three years after purchase. Both pools came with a 30-year limited factory warranty.

AquaSports, the manufacturer of the pools, and Menear, the owner of Cam-Rock, agreed to fully repair or replace all of the damaged or defective parts of the pools. One repair was completed successfully and Cam-Rock agreed to refund $2,500.00 to the second consumer because the repair attempt was not successful. The total of this settlement is $5,000.00.

17.

IN THE MATTER OF JERRY HILBERT, LLC

In June of 2004, the Division entered into an Assurance of Discontinuance with Jerry Hilbert, LLC, a plumbing, heating, and air conditioning contractor, located in Charleston, West Virginia. The investigation was prompted by consumer complaints that the business sold goods and services to consumers but failed to complete the work, that it sold goods and services to consumers without providing them with written contracts, and that it charged consumers unlawful debt collection fees. Under the terms of the assurance, the business paid restitution and cancelled debt totaling $3,014.26. The assurance also required Hilbert to stop collecting late fees, to provide written contracts complying with the requirements of the Home Improvement Rule, 142 C.S.R. Series 5, and to complete all work in a workmanlike manner.

18.

IN THE MATTER OF NOURSE FORD LINCOLN-MERCURY, INC.

On April 19, 2004, the Division entered into an Assurance of Discontinuance with Nourse Ford Lincoln-Mercury, Inc., doing business as Family Ford of Marietta, Ohio

(Family Ford), because of violations at its dealership in Parkersburg, West Virginia. The Division commenced an investigation after receiving a complaint alleging that Family Ford failed to repair a vehicle it sold in violation of the implied warranty of merchantability. The Division's investigation also revealed that Family Ford misled consumers by offering a limited warranty that promised to pay "100% of the labor and 100% of the parts for the covered systems that failed during the warranty period" when, in reality, consumers were charged a $100.00 deductible for each repair visit. Family Ford agreed to comply with the Act and to pay $2,120.00 in restitution.

19.

IN THE MATTER OF GEORGE HAMPTON
d/b/a NEW BATH SOLUTIONS

In April of 2004, the Division entered into an Assurance of Discontinuance with George Hampton, doing business as New Bath Solutions (Hampton). Hampton is a sole proprietor plumber who sells and installs bathroom fixtures from his business location in Cross Lanes, West Virginia. The investigation was prompted by a consumer complaint that Hampton performed substandard work in renovating a bathroom. The investigation revealed that Hampton had not properly registered his business name and that he used a written contract that violated the Home Improvement Rule, 142 C.S.R. Series 5. Under the terms of the assurance, Hampton paid consumer restitution and penalties in the amount of $1,750.00.

20.

IN THE MATTER OF M & S USED AUTOS, LLC

In April of 2004, the Division entered into an Assurance of Discontinuance with M & S Used Autos, LLC (M & S), a "buy-here pay-here" auto dealer located in Fairmont, West Virginia. The investigation was prompted by consumer complaints that M & S sold vehicles that broke down shortly after purchase. The investigation revealed that the business engaged in several practices that violated the Act. These violations included the following: (1) attempting to disclaim implied warranties; (2) imposing a late fee on installments that were not yet 10 days late; (3) charging late fees that exceeded the statutory maximum; (4) attempting to charge consumers unlawful debt collection fees; (5) requiring consumers to waive rights in connection with the repossession of vehicles; and (6) selling vehicles that were not merchantable. Under the terms of the assurance, the business paid consumer restitution in the amount of $1,460.00 and agreed to correct the above-described violations.

21.

IN THE MATTER OF HATTEN ENTERPRISES, INC.
d/b/a KENOVA SAVE-A-LOT

In July of 2004, the Division entered into an Assurance of Discontinuance with Hatten Enterprises, Inc., doing business as Kenova Save-A-Lot, a grocery store in Kenova, West Virginia. The investigation was prompted by consumer complaints that the business imposed an .89¢ surcharge on all credit card transactions of less than $50.00 and a .35¢ surcharge on all debit card transactions. Under the terms of the assurance,

the business agreed to stop adding a surcharge to credit card and debit card transactions, and to pay consumer restitution in the amount of $1,179.42.

22.

IN THE MATTER OF CR ADVERTISING, INC.

In July of 2004, the Division entered into an Assurance of Discontinuance with CR Advertising, Inc., an Iowa corporation, that markets sweepstakes promotions for auto dealers. The investigation was prompted by consumer complaints that they were required to pay money to receive prizes and that the promotions were misleading and deceptive. The investigation revealed the following: (1) the business represented to consumers that they had won prizes, but failed to deliver those prizes at no expense, within ten days, and without obligation; (2) the business represented that consumers were eligible to win prizes, but failed to properly disclose the number of prizes to be awarded, the true retail value of each prize, and the odds of winning each prize; and (3) the business used a simulated check but failed to clearly and conspicuously disclose the true retail value and purpose of the simulated check -- all in violation of the West Virginia Prizes and Gifts Act, W. Va. Code § 46A-6D-1 et seq. In addition, the business placed a 180-day expiration date on the gift certificates in violation of West Virginia law. Under the terms of the assurance, the business agreed to stop the above-described practices and to pay penalties in the amount of $1,000.00.

23.

IN THE MATTER OF DENBIGH-GARRETT FORD-MERCURY OF RIPLEY, INC.

In April of 2004, the Division entered into an Assurance of Discontinuance with Denbigh-Garrett Ford-Mercury of Ripley, Inc., a new and used automobile dealership located in Ripley, West Virginia. The investigation was prompted by a complaint that the business engaged in improper advertising of credit. Although the advertisement disclosed the monthly payment on the vehicle, it did not disclose the other required financial terms, in violation of the Truth in Lending Act, 15 U.S.C. § 1638 et seq. The business's failure to advertise the price of the vehicle was an unfair or deceptive act or practice under the Act. The business agreed to pay consumer restitution in the amount of $1,000.00 and to correct the above-described violations.

24.

IN THE MATTER OF RIPLEY CHRYSLER DODGE JEEP, INC.

In August of 2004, the Division entered into an Assurance of Discontinuance with Ripley Chrysler Dodge Jeep, Inc., a new and used automobile dealership located in Ripley, West Virginia. The investigation was prompted by a complaint that the business engaged in improper advertising of credit. Although the advertisements identified the monthly payment on the vehicle, it did not disclose the other required financing terms, in violation of the Truth in Lending Act, 15 U.S.C. § 1638 et seq. The business's failure to advertise the price of the vehicle was an unfair or deceptive act or practice under the Act. The business agreed to pay consumer restitution in the amount of $1,000.00 and to correct the above-described violations.

25.

IN THE MATTER OF MID-STATE CHEVROLET, OLDSMOBILE & BUICK, INC.

In August of 2004, the Division entered into an Assurance of Discontinuance with Mid-State Chevrolet, Oldsmobile & Buick, Inc., a new and used automobile dealership located in Sutton, West Virginia. The investigation was prompted by a complaint that the business engaged in improper advertising of credit. Although the advertisements identified the monthly payment on the vehicle, it did not disclose the other required financing terms, in violation of the Truth in Lending Act, 15 U.S.C. § 1638 et seq. The business's failure to advertise the price of the vehicle was an unfair or deceptive act or practice under the Act. The business agreed to pay consumer restitution in the amount of $1,000.00 and to correct the above-described violations.

26.

IN THE MATTER OF TEL-REN, INC., d/b/a COLORTYME

In April of 2004, the Division entered into an Assurance of Discontinuance with Tel-Ren, Inc., a Pennsylvania corporation, that operates a rent-to-own business doing business as Colortyme in Morgantown, West Virginia. The investigation was prompted by a consumer complaint that Colortyme accused her of stealing a camcorder and then disclosed the debt to her relatives and her employer. The company also threatened to take criminal action against the consumer. Under the terms of the assurance, the business cancelled the alleged indebtedness and paid $500.00 in consumer restitution, for a total of $813.50.

27.

IN THE MATTER OF CREDIT COUNSEL, INC.

In January of 2004, the Division entered into an Assurance of Discontinuance with Credit Counsel, Inc., of Miami, Florida. Credit Counsel, Inc., is a debt collection agency and had been doing business in West Virginia without a collection agency license. In the assurance, Credit Counsel promised to comply with the Act in its future debt collection practices and to comply with the Collection Agency Act, W. Va. Code § 47-16-1 et seq., before continuing business in West Virginia. Credit Counsel paid a civil penalty to the State in the amount of $700.00.

28.

IN THE MATTER OF CLEAR VUE SUNROOMS AND DOORS, LLC

In December of 2003, the Division entered into an Assurance of Discontinuance with Clear Vue Sunrooms and Doors, LLC (Clear Vue), of Cross Lanes, West Virginia. Clear Vue manufactures, sells, and installs windows, sunrooms, and doors throughout West Virginia. The Division received several complaints about Clear Vue and its continual refusal to honor warranties.

In the assurance, Clear Vue promised to comply with the Act and the Home Improvement Rule, 142 C.S.R. § 5. Clear Vue also agreed to honor all warranty claims from customers who had originally purchased goods and services from Clear Vue Manufacturing or any predecessor company of Clear Vue. Clear Vue also paid $500.00 in consumer restitution.

29.

IN THE MATTER OF M & J SALES, INC.

In March of 2004, the Division entered into an Assurance of Discontinuance with M & J Sales, Inc., and its owner, Michael G. Farmer. M & J Sales is engaged in the business of selling all-terrain vehicles and related merchandise in Chapmanville, West Virginia. Consumers complained that M & J Sales was using misleading sales and credit documents. In the assurance, M & J Sales promised to comply with the Act and to properly disclose the terms and conditions of its financing in compliance with state and federal law. M & J Sales also agreed to pay the State $500.00.

30.

IN THE MATTER OF OLA PICKRELL

In February of 2004, the Division entered into an Assurance of Discontinuance with Ola Pickrell, a Parkersburg, West Virginia, landlord who leases residential properties. The investigation was prompted by a complaint from a consumer who had leased a trailer from the business in November of 2003. The consumer complained that the trailer was not habitable because it had physical defects that made it impossible for her to get gas service, electric service, and telephone service. Even though the consumer was never able to live in the trailer, the landlord refused to refund the rental money and security deposit. A review of the lease showed that it had an unlawful late fee provision, an unlawful liquidated damages provision, and a provision that allowed the landlord to refuse to make repairs required in order to make the premises fit and habitable. The landlord

refunded $400.00 to the consumer and signed an assurance requiring him to revise the lease to comply with all state and federal laws.

31.

IN THE MATTER OF SCOTT STEELE
d/b/a S STEELE'S PLUMBING AND HEATING

In July of 2004, the Division entered into an Assurance of Discontinuance with Scott Steele, doing business as S Steele's Heating and Plumbing (Steele). Steele, a Princeton, West Virginia business, installs heating, ventilating, and plumbing equipment and does plumbing repairs and alterations. The investigation was prompted by a consumer complaint that the business imposed a 2.5% surcharge on credit card transactions. Under the terms of the assurance, the business agreed to stop adding a surcharge to credit card transactions and paid consumer restitution in the amount of $7.00.

C.

ANTITRUST DIVISION

The Antitrust Division of the Office of the Attorney General is under the same management as the Consumer Protection Division and is charged with the responsibility of enforcing the West Virginia Antitrust Act, W. Va. Code § 47-18-1 et seq. The purpose of the Antitrust Act is to prevent unreasonable restraints of trade, monopolies, and attempts to monopolize. The Antitrust Division is staffed by one attorney and one paralegal. Under the Antitrust Act, the Attorney General is authorized to take legal action on behalf of the State and/or on behalf of citizens to secure injunctive relief, restitution, civil penalties, damages, fees and costs. During this reporting period, the Antitrust Division secured $4,070,916.34 for the State and its citizens.

ANTITRUST LITIGATION

1.

State ex rel. Darrell V. McGraw, Jr. v. Warrick Pharmaceuticals Corporation, et al. (Civil Action No. 01-C-3011 - Circuit Court of Kanawha County)

In October of 2001, the State sued Warrick Pharmaceuticals Corporation, Dey, Inc., Abbott Laboratories, and Abbott Laboratories, Inc., claiming that the defendants purposely inflated their reported prices to First Data Bank, an information gathering company, which allowed pharmacies and other providers of the drug to recover money from government entities in excess of amounts to which they were entitled. Specifically, drug companies report their wholesale prices to a data gatherer who then supplies the information to Medicaid so that it can set reimbursement levels on the prices of

prescription drugs. A federal investigation revealed that the defendants were falsely inflating their reported prices to First Data Bank, which resulted in agencies setting higher reimbursement rates for these drugs. This illegal conduct resulted in Warrick having a larger market share. The drugs involved in this lawsuit are albeuterol sulphate, a common inhalant used for sufferers of asthma and other breathing difficulties, and vancomycin, an intravenous antibiotic.

One of the defendants, Dey, Inc., reached a settlement with the Attorney General's office in May of 2004. Under the terms of the settlement, Dey, Inc., paid the State $1,100,000.00. The trial with the remaining defendants is scheduled for April of 2005.

2.

State ex rel. Darrell V. McGraw, Jr. v. Microsoft Corporation
(Civil Action No. 01-C-197 - Circuit Court of Boone County)

On December 3, 2001, Attorney General McGraw filed a lawsuit against Microsoft Corporation seeking damages caused to the State and its consumers because of Microsoft's unlawful antitrust activities. In this action, the State sought damages for purchases made by governmental entities and consumers of the Windows 98 operating system.

In June of 2003, the State reached a settlement with Microsoft Corporation and agreed to dismiss its lawsuit upon final approval of the settlement. The Circuit Court of Boone County granted final approval in February of 2004. The order was not appealed and the settlement is now final. During this reporting period, Microsoft paid West Virginia $800,000.00.

Microsoft also offered up to $18,000,000.00* in vouchers that consumers and businesses could submit a claim for computer software. The deadline for submitting this claim has passed and the company is in the process of determining how many of the claims are valid. Once this number is determined, half of that amount will be made available as rebates to be used by schools to purchase computer software and hardware. Finally, next year an additional $1,000,000.00* in vouchers will be available for schools to purchase computer software and hardware and $700,000.00* in vouchers will be given to Attorney General McGraw to use to benefit the State and its citizens.

3.

State of Florida, et al. v. BMG Music, et al.
(Docket No. 01-CV-125-F-H, MDL No. 1361 - U.S.D.Ct., District of Maine)

In August of 2000, West Virginia joined 41 states and 3 territories in an action against BMG Music, Bertelsmann Music Group, Inc., Capitol Records, Inc., doing business as EMI Music Distribution, Virgin Records America, Inc., Priority Records, LLC, MTS, Inc., doing business as Tower Records, Musicland Stores Corporation, Sony Music Entertainment, Inc., Transworld Entertainment Corporation, Universal Music Group, Inc., Universal Music & Video Distribution Corp., UMG Recordings, Inc., Warner-Elektra-Atlantic Corporation, Warner Music Group, Inc., Warner Bros. Records, Inc., Atlantic Recording Corporation, Elektra Entertainment Group, Inc., and Rhino Entertainment, Inc., in the United States District Court for the Southern District of New York. The matter was transferred to the United States District Court for the District of Maine and was consolidated into the multi-district litigation. The states alleged that the defendants were

engaged in resale price maintenance, which had the effect of artificially inflating the price of recorded music compact discs.

By the beginning of 2003, the states had entered into a settlement agreement with all defendants providing for the payment of cash and the distribution of compact discs. The settlement was valued at $143,000,000.00.

During the reporting period, West Virginia received compact music discs valued at $480,965.16. Approximately 35,000 compact discs were distributed to 350 libraries, schools, and nonprofit entities in West Virginia. Also during the reporting period, 11,806 West Virginians who filed valid claims against the settlement fund received a total of $163,631.16. The total settlement was $644,596.32.

4.

State of Alabama, et al. v. Bristol-Myers Squibb Co., et al.
(Civil Action No. 01-CV-11401, MDL 1413 - U.S.D.Ct., Southern District of New York)

In December of 2001, more than 25 states and territories filed this civil action against Bristol-Myers Squibb Co., Danbury Pharmacal, Inc., and Watson Pharma, Inc. (BMS), claiming that the companies had violated antitrust laws in marketing BuSpar, a widely prescribed anti-anxiety drug. The states alleged that BMS knowingly made false statements to federal government regulators regarding patents on its brand name drug in order to maintain its monopoly, in violation of the antitrust laws. BMS's false statement prevented generic competitors from entering the market.

In March of 2003, the states and the defendants reached a settlement agreement whereby the defendants agreed to pay the states $100,000,000.00. A consumer claims process concluded at the end of 2003. West Virginia consumers received $596,638.80.

5.

State ex rel. Darrell V. McGraw, Jr. v. GlaxoSmithKline, PLC, et al.
(Civil Action No. 04-C-254-M - Circuit Court of Marshall County)

In October of 2004, Attorney General Darrell McGraw contemporaneously filed a lawsuit and consent order to settle the lawsuit against GlaxoSmithKline, PLC, and SmithKline Beechham Corporation, the manufacturers of the prescription drugs, Paxil, Augmentin, and Relafen. Paxil is commonly prescribed for anxiety and depression, Augmentin is an antibiotic, and Relafen is a non-steroidal pain reliever.

The State alleged that the defendants had unlawfully attempted to extend their patent protection for the three prescription drugs. After an investigation, and prior to filing the complaint, the State reached an agreement with the defendants to settle the manner. Under the terms of the settlement, the State received $500,000.00.

6.

State of Ohio, et al. v. Bristol-Myers Squibb Co.
(Civil Action No. 02-CV-01080 - U.S.D.Ct., District of Columbia)

On June 6, 2002, more than 25 states and territories filed a civil action against Bristol-Myers Squibb Co. for its unlawful conduct in protecting its marketing rights to Taxol, a cancer fighting drug. West Virginia and the remaining states and territories joined the litigation in early 2003. Taxol was developed jointly by Bristol-Myers Squibb and the United States government. By jointly developing the drug, Bristol-Myers Squibb was given exclusive marketing rights for five years. The states claimed that Bristol-Myers Squibb unlawfully extended the exclusive marketing period by obtaining bogus patents.

In April of 2003, the states reached a settlement with Bristol-Myers Squibb that required Bristol-Myers Squibb to pay $55,000,000.00. As part of the settlement, consumer claims were accepted through November 14, 2003. Part of the settlement proceeds were also used to reimburse State agencies that were overcharged for the drug.

West Virginia consumers received $109,989.00 through the claims process. The State also received $302,010.00 to pay State agencies, and the Attorney General's office was reimbursed $7,682.22. The total settlement was $419,681.22.

7.

State of Maryland, et al. v. Perrigo Company, et al.
(Civil Action No. 1:04-CV-01398 - U.S.D.Ct., District of Columbia)

In August of 2004, West Virginia joined 45 states, 3 territories, and the District of Columbia in an action against Perrigo Company and Alpharma, Inc., makers of generic children's ibuprofen. Attorney General McGraw alleged that the companies had violated the antitrust laws in its marketing of the generic pain relief medicine.

A consent order was filed along with the complaint and it required the defendants pay the states $500,000.00 plus attorneys' fees. West Virginia's share of the settlement was $10,000.00.

8.

State ex rel. Darrell V. McGraw, Jr. v. Abbott Laboratories, et al.
(Civil Action No. 01-C-180 - Circuit Court of Wyoming County)

On September 17, 2001, the Attorney General sued Abbott Laboratories, and Geneva Pharmaceuticals, Inc., for conspiring to prevent the entry of generic Hytrin onto the market. Hytrin is a high blood pressure medication, which is prescribed mostly for benign prostatic dysplasia. The Attorney General alleged that Geneva could have started selling its generic equivalent to Hytrin in 1998, but did not do so until August of 1999, because of an unlawful agreement between the two companies. In exchange for keeping its generic drug off the market, Geneva was paid $4,500,000.00 per month by Abbott, or about $70,000,000.00 during the conspiracy.

Because of complicated federal drug laws, no other generic competitor to Hytrin could enter the market until after Geneva did. Therefore, generic competition did not begin until August of 1999. Because of this unlawful agreement, consumers and government entities, such as Medicaid, paid far more for Hytrin and generic equivalents than they would have absent the anti-competitive conduct. The litigation is pending.

9.

State ex rel. Darrell V. McGraw, Jr. v. Visa U.S.A., Inc., et al.
(Civil Action No. 03-C-551 - Circuit Court of Ohio County)

On October 27, 2003, Attorney General McGraw sued Visa U.S.A., Inc., and MasterCard International, Inc., alleging violations of the Act and West Virginia antitrust laws. The lawsuit alleged that the companies used their market power with general purpose credit cards to force merchants to accept their branded debit cards. General

purpose credit cards are widely used throughout the United States for making purchases on credit. Debit cards, on the other hand, are used in place of writing a check. The complaint further alleges that the unlawful tying arrangement forced retailers to increase prices on goods and services, causing consumers to pay more for the items than they would have. The defendants have asked the trial court to dismiss the action. The matter is pending.

10.

State of New York, et al. v. Aventis S.A., et al.
(Civil Action No. 99-MDL-1278 - U.S.D.Ct., Eastern District of Michigan)

On May 14, 2001, West Virginia and 28 other states sued Aventis SA, Hoechst Aktiengesellschaft, Aventis Pharmaceuticals, Inc., Carderm Capital LP, and Andrx Corporation, alleging that the defendants conspired with each other to prevent a generic form of Cardizem CD, Cartia XT, from entering the market. Cardizem CD is a highly profitable, brand-name drug for treatment of chronic chest pain and high blood pressure. In exchange, Andrx was paid nearly $90,000,000.00 to delay selling Cartia XT for approximately one year. Because of complicated federal laws and regulations, no other generic manufacturer could start to sell its drug until after Cartia XT came onto the market. The states alleged that consumers and governmental entities, such as Medicaid, spent millions more than they would have if Andrx and other generic competitors to Cardizem CD had come onto the market earlier.

In December of 2002, the states reached a settlement agreement with Aventis and Andrx whereby the defendants agreed to pay the states $80,000,000.00. Preliminary approval of the settlement was granted in January of 2003, and a claims process was

established that gave consumers until November 15, 2003, to submit claims for reimbursements. State agencies also will receive reimbursements for overcharges.

Refunds have not been issued because the final approval of the settlement has been appealed. Oral arguments on the appeal were heard in September of 2004 by the United States Court of Appeals for the Sixth Circuit. The decision is pending.

D.

PRENEED FUNERAL UNIT

Attorney General McGraw's Preneed Funeral Unit is responsible for recording and regulating the sale, management, and execution of preneed funeral contracts. The Preneed Funeral Unit consists of an auditor, an administrative assistant, a part-time clerk, and a part-time lawyer.

There are currently 270 funeral homes licensed to sell preneed funeral contracts. In addition, there are 33 cemeteries licensed to sell preneed funeral contracts. The Preneed Funeral Unit has two funded accounts. The West Virginia Preneed Regulation Fund (the Regulation Fund) was established to pay for the administration of the Preneed Funeral Unit and is funded by fees paid by consumers and funeral homes. The West Virginia Preneed Guarantee Fund (the Guarantee Fund) was established to serve as an insurance account to protect consumers in the event a funeral home is financially unable to fulfill its preneed contractual obligations. As of October of 2004, the Regulation Fund had a balance of $307,127.73 and the Guarantee Fund had a balance of $786,081.44.

The Preneed Funeral Unit also resolves consumer complaints relating to preneed funeral contracts through its mediation process. This year, the Preneed Funeral Unit secured $6,215.13 in refunds through mediation for consumers.

1.

PRENEED FUNERAL UNIT LITIGATION

a.

State ex rel. Darrell V. McGraw, Jr. v. F.E. Runner Funeral Home, Inc., et al.
(Civil Action No. 04-C-108 - Circuit Court of Randolph County)

In 2003, F.E. Runner Funeral Home, Inc. (Runner), of Elkins, West Virginia, and its president, Cheryl Runner-Kittle, failed to renew their license and certificate of authority to sell preneed funeral contracts. The Division entered into an Assurance of Discontinuance with Runner in which the funeral home agreed to submit timely renewals in the future, pay fines and costs of $1,000.00, and comply with the Preneed Funeral Contracts Act, W. Va. Code § 47-14-1 et seq.

In November of 2003, the Division audited Runner and learned that it had failed to disclose a number of preneed funeral contracts to the Preneed Funeral Unit. In May of 2004, the Division sued Runner and Runner agreed to settle the case by submitting all delinquent filings to the Attorney General and paying costs in the amount of $500.00. The total settlement was $1,500.00.

b.

State ex rel. Darrell V. McGraw, Jr. v. Bartolo Funeral Home, Inc., et al.
(Civil Action No. 04-C-361-2 - Circuit Court of Harrison County)

In July of 2004, the Division filed a lawsuit against Bartolo Funeral Home, Inc., and its owner, James F. Bartolo (Bartolo), in the Circuit Court of Harrison County, alleging that the funeral home had misappropriated funds paid by consumers for preneed funeral contracts. When Bartolo ceased doing business at his Clarksburg funeral home last

year, the Preneed Funeral Unit began receiving complaints that the funeral director was refusing to refund consumers' monies they had paid on their preneed funeral contracts. An audit revealed that there were approximately 50 preneed funeral contracts that Bartolo had failed to report to the Division, and 26 instances where Bartolo had failed to report the withdrawal of consumers' money after servicing their contracts. Approximately $160,000.00 is missing from Bartolo's preneed funeral contract accounts. The lawsuit seeks restitution for consumers, and to forever enjoin Bartolo from selling preneed funeral contracts. Trial is scheduled for December 10, 2004.

c.

State ex rel. Darrell V. McGraw, Jr. v. Myers Funeral Home, Inc., et al.
(Civil Action No. 04-C-78 - Circuit Court of Kanawha County)

In 2003, Myers Funeral Home (Myers) in Elkview, West Virginia, and its owners, Frederick Arthur Myers, Jr., and Frederick Dale Myers (Rick Myers), failed to renew their license and certificate of authority to sell preneed funeral contracts. Myers had also failed to submit its biennial report to the Attorney General. The Division audited Myers' preneed funeral accounts, and discovered seven preneed funeral contracts that the funeral home had failed to disclose to the Attorney General's office, as required by law. When Myers ignored the Division's warning to correct the delinquencies, the Division sued Myers. The Circuit Court of Kanawha County enjoined the funeral home from accepting any advance payments for funeral goods or services until such time as its operations were compliant with state law. Since filing the original lawsuit, the Division has learned that one consumer's funds were misappropriated by Rick Myers.

d.

State ex rel. Darrell V. McGraw, Jr. v. Lowes Mortuary, et al.
(Civil Action No. 04-C-104 - Circuit Court of Mingo County)

In April of 2004, Attorney General McGraw sued Lowes Mortuary, in Williamson, West Virginia, and its owners, in the Circuit Court of Mingo County. After closing its doors in late 2003, the funeral home refused to refund more than $7,000.00 it had received as payment on a preneed funeral contract. The company had accepted the money from an elderly Williamson resident in the spring of 2001, but never disclosed the transaction to the Attorney General's office as required by law. During the three years the company was in business, the mortuary never obtained a license or a certificate of authority from the Attorney General to sell and manage preneed funeral contracts. The court has ordered the business owners to pay $7,025.00 in consumer restitution, $63,178.10 in fines, and $7,482.24 in costs, for a total of $80,053.04.*

2.

PRENEED FUNERAL UNIT ASSURANCES OF DISCONTINUANCE AND SETTLEMENT AGREEMENTS

a.

IN THE MATTER OF CARNEGIE FUNERAL HOME

In December of 2003, Daniel Carnegie, owner of Carnegie Funeral Home, decided to close his funeral home in Flemington, West Virginia. The Attorney General's office began contacting consumers to assist them in designating a new funeral home to honor their preneed funeral contracts. Some consumers had moved since the time they had

purchased their preneed funeral contracts, and McGraw's office searched until each and every consumer could be located. In all, the Preneed Funeral Unit assisted in the successful transfer of $113,278.00 in consumers' preneed funeral contract funds to other funeral homes.

b.

IN THE MATTER OF JOHNSON-WILLIAMS FUNERAL HOME, INC.

In July of 2003, the Attorney General's office learned that Johnson-Williams Funeral Home, Inc. (Johnson-Williams), owned by Arley Johnson (Johnson), of Huntington, West Virginia, was insolvent. The Preneed Funeral Unit contacted Johnson and the former owner of the business, Arthur Williams (Williams), to ensure that all preneed funeral contract accounts were fully funded, so that other Huntington-area funeral homes could service consumers' funerals. After an audit and a series of meetings with Williams and Johnson, the Preneed Funeral Unit determined the identities and locations of consumers who had purchased preneed funeral contracts from Johnson-Williams over the years. The Attorney General's office contacted all consumers, and assisted in the successful transfer of preneed funeral contracts valued at $15,350.00.

c.

IN THE MATTER OF DENT FUNERAL HOMES, INC.

The Division entered into an Assurance of Discontinuance with Dent Funeral Homes, Inc., which operated funeral homes in Mannington, Farmington, and Hundred,

West Virginia, and its owner, Leroy E. Dent (Dent). When the corporation changed hands in 2002, a number of problems were discovered with the company's preneed funeral trust accounts. An audit by the Preneed Funeral Unit revealed that Dent had made personal use of consumers' preneed trust funds, filed false reports with the Preneed Funeral Unit, and had failed to keep accurate books and records of its transactions.

In January of 2003, Dent signed an Assurance of Discontinuance. Pursuant to the assurance, Dent surrendered his funeral directors license to the Board of Funeral Service Providers, and agreed to permanently refrain from any involvement in the funeral industry. Mr. Dent paid a fine of $10,000.00* to the Preneed Regulation Fund, and replaced money that was missing from consumers' preneed funeral contract accounts. Mr. Dent paid a total of $40,004.47* in 2003. The terms of the assurance also required Dent to replace any other funds that the new funeral home owners discovered missing from consumers' preneed funeral contract accounts. In 2004, Dent was required to pay an additional $6,071.84.

d.

IN THE MATTER OF UPCHURCH FUNERAL HOME, INC.

An audit of Upchurch Funeral Home, Inc. (Upchurch), in Fort Ashby, West Virginia, and its president, Wendy Upchurch, revealed that the funeral home had failed to report and submit contract recording fees to the Division for at least ten preneed funeral contracts it had sold to West Virginia consumers. The funeral home had also failed to use proper forms and procedures for these transactions, and had deposited consumers'

advance payments in out-of-state banks, in violation of West Virginia law. Under the terms of the Assurance of Discontinuance, Upchurch agreed to comply with West Virginia law in the future, submitt all required filings, and paid fees and costs of $2,000.00.

e.

IN THE MATTER OF HARMER FUNERAL HOME

On April 7, 2004, the Division entered into an Assurance of Discontinuance with Harmer Funeral Home (Harmer), in Shinnston, West Virginia, and its owner David Harmer. An audit by the Preneed Funeral Unit revealed that Harmer had sold at least 15 preneed funeral contracts to West Virginia consumers without reporting the transactions to the Preneed Funeral Unit, and without paying the contract recording fees. Harmer had also failed to inform the Attorney General of at least 30 preneed funeral contracts it had serviced in the past. Under the assurance, Harmer submitted all required filings, and paid fees and costs totaling $1,800.00.

VI.

CONCLUSION

2004 was another successful year for the Consumer Protection and Antitrust Divisions in that they recovered $70,034,300.36 for consumers and the State. Attorney General McGraw is pleased by this figure, but cautions the reader against too narrow a focus on it. Such a focus is natural -- we grasp the tangible more quickly and securely than the intangible -- and, in this, the world's greatest market economy, dollar signs draw the most attention. Attorney General McGraw believes that, substantial as it is, this particular dollar sign grossly undervalues his office's efforts.

How? First of all, many or most of the thousands of mediations conducted this year might have become lawsuits, increasing the expenses of both parties and clogging the State's overburdened courts with small claims.

Second, in several instances this past year, the Division was simply ahead of the curve, snuffing out incipient consumer abuse before it caused widespread damage. For example, the Division secured hundreds of thousands of dollars for consumers who were victims of unsavory characters in the funeral industry, enjoined the use of abusive debt collection practices, and curbed the anti-competitive use of resale price maintenance by the music industry. The amount the exploiters of such practices might have fleeced from West Virginia consumers had the practices proliferated and become established can never be known.

Finally, there is a commodity whose great value utterly defies expression in dollars and cents: education. A consumer who learns how to protect himself is less likely to be harmed; a business that learns where the law draws its lines is less likely to transgress

them. Thus, education is the linchpin of preventing consumer fraud and abuse in the first place, with the happy dividend of reducing demand for mediation and litigation. Ideally, Attorney General McGraw would rather be a teacher of dispute avoidance than a player in dispute resolution. While that ultimate ideal is perhaps unattainable, all progress toward it benefits our State and citizens.

Respectfully submitted,

Darrell V. McGraw, Jr.
Attorney General

Exhibit 1

COMPARISONS

2004		2003	2002	2001	2000	1999	1998	1997	1996	1995
MEDIATION COMPLAINTS										
Complaints received	9,143	8557	8,573	8,080	7,929	8,891	8,903	7,106	6,691	5,516
Complaints closed	9,581	9511	8,934	8,572	8,342	9,830	8,007	7,252	5,858	4,809
Restitution	$ 2,496,207.75	$2,300,282.00	$1,690,726.15	$1,284,772.76	$1,872,763.62	$1,230,609.05	$ 946,267.05	$1,121,614.54	$ 594,652.44	$ 453,300.46
CONSUMER PROTECTION										
Lawsuits	$58,404,584.00	$71,225,894.80	$66,170,098.77	$61,684,366.53	$51,179,434.48	$ 963,570.47	$ 413,924.83	$ 1,710,739.92	$ 932,192.90	$ 128,252.95
Assurances	$ 4,916,377.30	$ 859,270.62	$ 857,852.95	$ 1,683,951.90	$ 830,283.36	$ 3,814,322.30	$ 3,679,326.10	$ 2,323,153.67	$ 1,316,375.40	$ 57,031.58
ANTITRUST										
Lawsuits-Assurances	$ 4,070,916.34	$ 1,741,992.55	$6,525,816.90	$548,724.30	$ 262,000.00	$ 26,000.00	----	$ 220,950.14	$ 342,600.00	$ 266,837.00
PRENEED FUNERAL UNIT										
Lawsuits-Assurances	$ 146,214.97	$ 98,613.07	$ 62,134.48	$ 63,807.85	$ 465,663.99	$3,082,033.34	$ 322,557.98	$ 139,511.30	$ 123,319.45	$ 7,175.00
TOTAL										
RESTITUTION	**$70,034,300.36**	**$76,226,053.04**	**$75,306,629.25**	**$65,265,623.34**	**$54,610,145.45**	**$9,116,535.16**	**$5,362,075.96**	**$5,515,969.57**	**$3,309,140.19**	**$ 912,596.99**

2003 - 2004 COMPARISONS

2004		2003	2003-2004 INCREASE	%
MEDIATION COMPLAINTS				
Complaints received	9,143	8,557	586	6%
Complaints closed	9,581	9,511	70	1%
Restitution	$2,496,207.75	$2,300,282.00	$195,925.75	8%
CONSUMER PROTECTION				
Lawsuits	$58,404,584.00	$71,225,894.80	-$12,821,310.80	-18%
Assurances	$ 4,916,377.30	$ 859,270.62	$ 4,057,106.68	472%
ANTITRUST				
Lawsuits - Assurances	$ 4,070,916.34	$ 1,741,992.55	$2,328,923.79	133%
PRENEED FUNERAL UNIT				
Lawsuits - Assurances	$ 146,214.97	$ 98,613.07	$47,601.90	48%
TOTAL				
RESTITUTION	**$70,034,300.36**	**$76,226,053.04**	-$6,191,752.68	-8%

CPD Total Comparison Without Tobacco

			2003		2004	
2003 Total	**$76,226,053.04**					
2004 Total	**$70,034,300.36**		Total	$76,226,053.04	Total	$70,034,300.36
	2003 Tobacco	**$67,730,347.00**	Tobacco	-$67,730,347.00	Tobacco	-$58,005,977.90
	2004 Tobacco	**$58,005,977.90**	Total without Tobacco	$8,495,706.04	Total Without Tobacco	$12,028,322.46

Percentage comparison without Tobacco

2004	2003	2003-2004 Increase	%
$12,028,322.46	**$8,495,706.04**	**$3,532,616.42**	**41%**

Exhibit 2

MEDIATION

Written complaints received during reporting period ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ 9,143

Written complaints closed during reporting period ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ 9,581

Written complaints pending for reporting period ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ ✍ 586

Cash refunds received by consumers from mediation during reporting period $448,017.02

Value received by consumers from mediation during reporting period $2,048,190.73

Exhibit 3

TOP 10 COMPLAINTS

CREDIT 1111111111111111111111111111111111111111111111111111111111111111 1432

AUTO 2222222222222222222222222222222222222222222222222222222222222222 1253

COMMUNICATION (INTERNET SERVICES - CELL PHONES) 333333333 1170

HOME REPAIR 444444444444444444444444444444444444444444444444444444 892

GENERAL SALES 5555555555555555555555555555555555555555555555555555 610

PROMOTIONS (SWEEPSTAKES) 66666666666666666666666666666666666666 515

UTILITIES (CRAMMING/SLAMMING) 77777777777777777777777777777777777 491

ELECTRONIC EQUIPMENT 888888888888888888888888888888888888 343

HEALTH (MEDICAL SERVICES AND PRODUCTS) 999999999999999999999999 312

MISCELLANEOUS 000000000000000000000000000000000000000000000000000000 309